S.B.Civil Writ Petition No.5283/2004
Bhanwarlal
vs.
Board of Revenue & Ors.

DATE OF ORDER : - 14.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.R.S.Chundawat, for the petitioner.

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Heard learned counsel for the petitioner.

Brief facts of the case are that applicant Ganesh submitted an application on 22nd Oct., 1996 under Section 251 of the Rajasthan Tenancy Act stating therein that way to his agricultural field Araraji no.286/224/265 measuring 2 Bighas 10 Biswas situated in village Raghunathpura is only from the filed of petitioner Bhanwarlal. He stated that petitioner Bhanwarlal closed the way reaching to the applicant-respondent's agricultural field and, therefore, his crop is being damaged. On this ground, the applicant-respondent Ganesh prayed that appropriate order may be passed for opening the way.

On said application, a report was called from the Gram Panchayat, which was submitted by the Gram Panchayat. The Gram Panchayat in its report dated 22.2.1997 stated that there is no way

recorded in the revenue record and the applicant Ganesh can have the way only from the Khatedari land of the petitioner Bhanwarlal. The Tehsildar, Rajsamand ultimately passed the order on 27th Oct., 1999 and allowed 12 feet wide way to the applicant Ganesh from the field of the petitioner Bhanwarlal. In the order dated 27th Oct., 1999 it is clearly mentioned that the applicant-respondent Ganesh shall have right to use the way from Araji No.287/224 for the purpose of taking agricultural implements etc to his field. Meaning thereby the way was open so that the way can be used for approach to the applicant Ganesh agricultural land for the purpose of his agricultural operations.

The petitioner preferred appeal against the said order dated 27th Oct., 1999 before the District Collector, Rajsamand, which was dismissed by the learned District Collector vide order dated 20th July, 2000. The petitioner preferred revision petition before the Board of Revenue, that too, was dismissed vide order dated 14th May, 2003 and, thereafter, the petitioner further preferred review petition against the order of the Board of Revenue dated 14th May, 2003, that too, was dismissed by the Board of Revenue vide order dated 28th Oct., 2004.

Learned counsel for the petitioner submits that though there are concurrent finding of all the courts against the petitioner, but the petitioner apprehends that the respondent Ganesh will use the way for

his mining activities and will transport the goods from the mining areas by using the way in dispute, which will cause serious damage to the petitioner's agricultural land. The facts mentioned above clearly reveal that the petitioner sought a specific relief for way for better use of his agricultural land only and there is no mention that the way, which the respondent Ganesh sought is a public way and can be converted into a public way by using the way for all other purposes and which includes the agricultural purpose. The way claimed by the said Ganesh appears to be not a public way, but only a way leading to Ganesh agricultural land, therefore, the orders cannot be treated to be holding the way as public way for utilizing the way for all other purposes.

In view of the above the apprehension of the petitioner is not well founded. Hence, the writ petition of the petitioner is dismissed having no merit.

(Prakash Tatia), J.

c.p.goyal/-